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07 NOV 2006

In re Application of :
BROOM, Murray F. :
U.S. Application No.: 10/568,705 :
PCT No.: PCT/NZ2004/000191 :
Int. Filing Date: 20 August 2004 :
Priority Date: 21 August 2003 :
Attorney Docket No.: 061967-0103 :
For: SAMPLING DEVICE :
:

DECISION

This decision is in response to the "Petition Under 37 C.F.R. § 1.47(b)" ("Pet.") filed with the United States Designated/Elected Office (DO/EO/US) on 10 August 2006.

BACKGROUND

On 05 July 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicants were given two months to respond with extensions of time available.

On 10 August 2006, applicants filed the subject petition which was accompanied by, inter alia, a declaration signed by the 37 CFR 1.47(b) applicant for the nonsigning inventor; a statement of facts signed by Diana F. Hill, CEO of the Global Technologies Ltd.; copies of two assignments; and authorization to charge any required fee to Deposit Account No. 19-0741.

DISCUSSION

Petitioner filed the subject petition in response to the Form PCT/DO/EO/905 mailed 05 July 2006. The 37 CFR 1.47(b) applicant claims that the sole inventor in the above-captioned application refuses to cooperate.

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the required petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of the nonsigning joint inventor (5) evidence showing sufficient proprietary interest in the application; and (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage.

Concerning item (1), the petition fee is now \$200.00. Petitioner submitted a \$130.00 petition fee. The \$70.00 difference has been charged to Deposit Account No. 19-0741 as authorized.

Regarding item (2), the 37 CFR 1.47(a) applicant claims that the sole inventor refuses to join in the application. Petitioner states that a complete copy of the application was presented to Mr. Broom 29 March 2006. Petitioner has submitted documentary evidence to verify this claim. Moreover, petitioner submitted a statement by Diana F. Hill, CEO of the Global Technologies Ltd. who claims that she received a telephone call from the sole inventor on 03 April 2006 informing her that he would not sign the documents in the subject application. Ms. Hill listed Mr. Broom's reasons for refusing to cooperate as required by section 409.03(d) of the MPEP.

This conduct by Mr. Broom constitutes an oral refusal to cooperate and is sufficient to meet the requirements of item (2) of 37 CFR 1.47(b).

With regards to item (3), the last known address of the nonsigning joint inventor, Murray Frederick Broom is given as:

6 Pleasant Drive
Dunedin
New Zealand

Concerning item (4), the 37 CFR 1.47(b) applicant submitted a declaration signed by Diana F. Hill, CEO of the Global Technologies (NZ) Ltd. on behalf of Mr. Broom. The position of CEO is presumed to have the authority to sign for an organization. See MPEP § 324.

A review of the declaration shows that it is in compliance with 37 CFR 1.497(a) and (b) as the residence, address and citizenship of the sole inventor are recorded on the declaration. As such, item (4) is satisfied.

Regarding item (6), the 37 CFR 1.47(b) applicant states that filing this petition "is necessary to preserve the right of Global Technologies (NZ) Ltd. in the invention." This statement satisfies item (6).

Hence, items (1), (2), (3), (4) and (6) of 37 CFR 1.47(b) are complete.

With regards to item (5), petitioner claims sufficient proprietary interest in the above-captioned application due to fact that the inventor assigned their interest in the subject application to Global Technologies (NZ) Ltd. Section 409.03(f) of the MPEP discusses proof of proprietary interest and states, in part:

If the application has been assigned, a copy of the assignment (in the English language) must be submitted. The assignment must clearly indicate that the invention described in the 37 CFR 1.47(b) application was assigned to the 37 CFR 1.47(b) applicant. A statement under 37 CFR 3.73(b) by the assignee must also be submitted (see MPEP § 324).

Here, petitioner has provided a copy of the assignment of the international application to Global Technologies (NZ) Ltd. signed by Mr. Broom. This assignment gives the right of the assignee to file in any country of the world and is acceptable. However, petitioner has not submitted a statement under 37 CFR 3.73(b) by the assignee as required.

Therefore, item (5) of 37 CFR 1.47(b) is not yet satisfied.

CONCLUSION

For the reason discussed above, applicant's petition under 37 CFR 1.47(b) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. No additional petition fee is required.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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